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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,  
  
v.  
  
IVAN CERNA, et al,  
  
Defendants.

No. S3-CR-08-0730-WHA

GOVERNMENT'S RESPONSE TO  
COURT'S ORDER REGARDING DALY  
CITY REPORT (DOCKET #4205)

The Government respectfully submits this Response to the Court's Order for information regarding the Daly City offense report relating to the April 16, 2004 murder of Francisco Garcia produced by the Government on May 10, 2011. The Government also submits this Response to correct some facts it presented to the Court.

With respect to the Court's questions:

1. The Government is aware of no ICE agents who participated in the interview of Jaime Martinez on October 25, 2005. The Daly City report itself indicates that, although Martinez was in immigration custody, San Francisco Police Officer Mario Molina arranged the interview. The report also does not list any ICE agents as being present.

1           2.       The Government is not aware of any notes or summary either made or received by  
2 any ICE agents or any federal prosecutor of the interview referenced above beyond what the  
3 Government produced on May 10, 2011, which it received on May 9, 2011.

4           3.       The Government has asked Sergeant Mario Molina whether he made or received  
5 notes or a summary of the subject interview and Sergeant Molina replied he did not.

6           4.       “Catracho” referenced on page 2 of the Daly City report is *not* the same person  
7 known as 1211. As Jaime Martinez testified, this “Catracho” was different from 1211. See Trial  
8 Tr. at 5793 (Martinez testifying that Moris Flores stated he committed shooting with “Memo”  
9 and “Catracho – this Catracho is a different one from Little Bad Boy.”).

10           The Government would also like to correct two factual assertions it provided to the Court.  
11 First, the Government advised the Court that a shooting listed on its Bill of Particulars — i.e., a  
12 shooting in or about June 2004 in the vicinity of Mission and John Daly Boulevard — was a  
13 different event than the Francisco Garcia murder referenced above and is believed to be the  
14 subject of Jaime Martinez’s testimony. Although Martinez’s testimony is incorrect with respect  
15 to the location and date of the murder (the murder occurred in the vicinity of Hanover and  
16 Templeton Streets in Daly City on April 16, 2004, while Martinez testified that the murder  
17 happened in March 2004 at the intersection of Mission and San Jose Avenue (roughly 7-8 blocks  
18 away from Hanover and Templeton), see Trial Tr. at 5793), upon further reflection, the  
19 Government now believes that Martinez was referring to the Francisco Garcia murder.

20           Second, the Government erred when it stated that it had not provided notice of this  
21 shooting to the defense previously. In fact, Report of Investigation #576 (July 1, 2009), bearing  
22 control numbers “1218-00001” to “1218-000013,” and provided to the defense on or about  
23 December 22, 2010, contains a substantially similar account of Martinez’s testimony relating to  
24 the Daly City shooting described above. Specifically, page 1218-000008 contains the following:

25           1218 stated that one night while 20<sup>th</sup> Street MS members MEMO, SLOW and  
26 CATRACHO were out hunting for Norteno gang members, they were stopped at a  
27 stop light and noticed some Norteno gang members pull up beside them. While  
28 stopped at the light, SLOW, who was sitting in the back of the gold Pontiac that  
CATRACHO was driving, began to shoot in the direction of the Norteno gang

1 members. The Norteno gang members then drove away and ended up hitting a  
2 pole. 1218 stated that this incident occurred on top of the hill at Mission Street  
3 and John Daly Boulevard in Daly City, CA and at approximately 2:00 AM - 3:00  
AM.

4 The Government initially failed to recognize that the incident described in ROI 576 was  
5 the same incident about which Martinez testified because the date and the street names he used  
6 differed. Martinez's description of the incident, however, remains substantially similar.

7 Thus, Mr. Rosenbush's claim that the Government "deceived" the Court and counsel,  
8 Trial Tr. at 5892, is utterly baseless. The Government has fully complied with its discovery and  
9 disclosure obligations. Here, the Government produced ROI 576 in December 2010, and, when  
10 it later (erroneously) believed that a further disclosure was necessary, it sent a letter summarizing  
11 Martinez's testimony on May 5, 2011, even though no such letter was required under the law.  
12 See, e.g., United States v. Bernard, 625 F.2d 854, 859 (9th Cir. 1980) ("Descriptions of  
13 interviews with witnesses that are not 'substantially verbatim' are not discoverable under the  
14 Jencks Act. We cannot read into this requirement a further requirement that the government  
15 create such discoverable statements in the first instance. Nor can we find a constitutional basis  
16 for compelling the creation of such material under Brady.").

17 Indeed, Mr. Rosenbush's allegation of Government deception is even more galling in  
18 light of the fact that he *used* ROI 576 during his cross-examination of Martinez on May 10, 2011.  
19 See Trial Tr at 5811-12 (showing witness July 1, 2009 report to refresh witness recollection).  
20 For Mr. Rosenbush to claim deceit by the Government is simply ridiculous.

21 Dated: May 13, 2011

22 Respectfully submitted

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25 By: /s/  
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